

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 311 of 1992

Date of Decision: 19.1.1993

Udayanath Mishra : Applicant

Versus

Union of India & Others : Respondents

For the applicant M/s. B.S. Mishra,
S.C. Kar,
G. Mishra,
Advocates

For the respondents Mr. P.N. Mohapatra,
Addl. Standing Counsel
(Central Government)

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C O R A M:

THE HONOURABLE MR. K.P. ACHARYA, VICE-CHAIRMAN

AND

THE HONOURABLE MR. S.R. ADIGE, MEMBER (ADMINISTRATIVE)

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1. Whether the reporters of local newspapers may be allowed to see the judgment ? Yes
2. To be referred to reporters or not ? Yes
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes

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JUDGMENT

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MR. K. P. ACHARYA, VICE-CHAIRMAN, The petitioner was engaged as a driver on 5.3.1990 against a particular vacancy. Since a particular person was selected on regular basis against that vacancy, the petitioner was disengaged on 1.3.1991 and he was reengaged on casual basis on 1.9.1991. Grievance of the petitioner is that even though he has served as a driver for such a long time, yet his services is not being regularised. Hence this application has been filed with the aforesaid prayer to direct the opposite parties to regularise the services of the petitioner and not to terminate the same.

2. In their counter the opposite parties maintain that as and when work is available the petitioner is being engaged. Question of automatic regularisation does not arise because the petitioner has to stand a ~~suitability~~ test along with others and thereafter the regular appointment order will be issued.

3. We have heard Mr. B. S. Mishra, learned counsel for the petitioner and Mr. P. N. Mohapatra, learned Standing Counsel.

4. At the outset we must keep on record the fair submission made by Mr. P. N. Mohapatra, learned Standing Counsel on instructions that till today there is no intention on the part of the competent authority to terminate the services of the petitioner. The apprehension of the petitioner on this account is baseless. Accepting the statement we come to the conclusion that till today there is no intention on the part of the competent authority to terminate the services of the petitioner, but this does not necessarily mean that in future if the petitioner commits any misconduct, this undertaking will stand on the way of the competent authority to take necessary action according to law against the petitioner.

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5. Now coming to the prayer of the petitioner for regularisation, Mr. B.S. Mishra relied upon a judgment passed by this Bench in Original Application No. 397 of 1989 disposed of on 7.8.1991. In that **case** the Bench observed as follows:

"Taking into consideration all the facts and circumstances and the law laid down by the Supreme Court we come to the conclusion that the applicant may be absorbed in the post of a Dresser which he is occupying as a Casual labourer or delegated for the last more than five years and only test is required to pass is that physical fitness."

Mr. Mishra also relied upon a judgment of this Bench passed in Transferred Application No. 319 of 1986 disposed of on 17.12.1986 directing regularisation of the services of some casual workers. Accordingly Mr. Mishra submitted that this Bench should not make a departure from the view taken in the above mentioned judgments. True it, there should not any conflicting ~~be~~ opinion of the same Bench or between coordinate Benches. But the judgments referred to by Mr. Mishra stand in a different footing. In those judgments cases of Inderpal Yadav, Surinder Singh etc. have been considered and being bound by the views of the Supreme Court, the Bench ordered accordingly, but later judgments of the Supreme Court have taken a different view reported in A.I.R. 1992 SC 2130 (State of Haryana and others vs. Piara Singh and others). In this case at paragraph 12 and 17 of the Judgment, Their Lordships have been pleased to observe as follows :

" As would be evident from the observations made and directions given in the above two cases, the court must, while giving such directions, act with due care and caution. It must first ascertain the relevant facts, and must be cognizant of the several situations and eventualities that may arise on account of such directions. A practical and pragmatic view has to be taken, inasmuch as every such directions not only tells upon the public exchequer but also

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has the effect of increasing the cadre strength of a particular service, class or category. Now take the directions given in the judgment under appeal. Apart from the fact the High Court was not right - as we shall presently demonstrate in holding that the several conditions imposed by the two Governments in their respective orders relating to regularisation are arbitrary not valid and justified - the High Court acted rather hastily in directing wholesome regularisation of all such persons who have put in one year's service, and that too unconditionally. We may venture to point out the several problems that will arise if such directions become the norm :

(a) Take a case where certain vacancies are existing or expected and steps are taken for regular recruitment either through Public Service Commission or other such body, as the case may be. A large number of persons apply. Inevitably there is bound to be some delay in finalising the selections and making the appointments. Very often the process of selection is stayed or has to be re-done for one or the other reason. Meanwhile the exigencies of administration may require ~~appointment~~ of temporary hands. It may happen that these temporary hands are continued for more than one year because the regular selection has not yet been finalised. Now according to the impugned direction the temporary hands completing one year's service will have to be regularised in those posts which means frustrating the regular selection. There would be no post left for regularly selected persons even if they are selected. Such cases have indeed come to this court from these very two States.

(b) In some situations, the permanent incumbent of a post may be absent for more than a year. Examples of this are not wanting. He may go on deputation, he may go on Faculty Improvement Programme (F.I.P.), or he may be suspended pending enquiry into charges against him and so on. There may be any number of such situations. If a person is appointed temporarily in his place and after one year he is made permanent where will the permanent incumbent be placed on his return ? Two persons cannot hold the same post on a regular or permanent basis.

(c) It may also happen that for a particular post a qualified person is not available at a given point of time. Pending another attempt at selection later on an unqualified person is appointed temporarily. He may continue for more than one year. If he is to be regularised, it would not only mean foreclosing of appointment of a regular qualified person, it would also mean appointment of an unqualified person.

(d) Such directions have also the effect of
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disregarding and violating the rule relating to reservation in favour of backward class of citizens made under Article 16(4). What cannot be done directly cannot be allowed to be done in such indirect manner.

(e) Many appointments may have been made regularly - as in this case - in the sense that the candidates were neither sponsored by the Employment Exchange nor were they appointed after issuing a proper advertisement calling for applications. In short, it may be a back door entry. A direction to regularise such appointments would only result in encouragement to such unhealthy practices.

These are but a few problems that may arise, if such directions become the norm. There may be many such and other problems that may arise. All this only emphasises the need for a fuller consideration and due circumspection while giving such directions.

17. Now coming to the direction that all those adhoc/temporary employees who have continued for more than an year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every adhoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him - which means creation of a vacancy (b) he was not sponsored by the Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back-door (c) he was not eligible and/or qualified for the post at the time of his appointment (d) his record of service since his appointment is not satisfactory. These are in addition to some of the problems indicated by us in para 12, which would arise from giving such of blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for a regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no 'rule of thumb' in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must

be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. Judged from this standpoint, the impugned directions must be held to be totally untenable and unsustainable.

In paragraph 25 of the judgment Their Lordships have also observed that for any reason an adhoc or temporary employee is continuing for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the state. Similar view has also been expressed in another case reported in A.I.R. 1992 SC 2070 (Director, Institute of Management Development, U.P. vs. Smt. Rupa Srivastava) In view of these latest pronouncements of the Supreme Court, we do not feel inclined to give preference to the judgments of this Bench relying on the previous judgments of the Supreme Court. That apart from the commonsense point of view a particular driver of a vehicle must satisfy that he is fit and suitable to drive the vehicle as passengers will be safe. Therefore, in our opinion automatic regularisation of the petitioner should not be made from the prudential point of view. We were told that the competent authority had fixed a date viz. 23.4.1992 for holding test in respect of different drivers as contained in Annexure-2. It was told to us that this interview has been adjourned sine die. We would direct that the concerned authority may immediately take steps preferably within a fort-night from the date of receipt of a copy of this judgment and necessary intimation be given to all the intending candidates including that of the petitioner who should be

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considered and thereafter suitability be adjudged; he, whosoever is found to be suitable may be appointed. We hope and trust the selection process will be completed within 60 days from the date of interview.

6. We hope and trust the competent authority would be benevolent and take a sympathetic attitude towards the petitioner in giving some work. In case the petitioner has exhibited any behaviour which has seriously affected the higher authority, the petitioner should be excused and a sympathetic view should be taken over the petitioner, especially in these hard days when every man is running from post to pillar to sustain his livelihood. We are very sure the concerned authority would henceforward give some work to the petitioner to sustain his livelihood, till regular selection is made.

7. In case the petitioner has not been paid his arrears for days he has rendered services, the same should be paid to him according to rules. Thus the application is accordingly disposed of leaving the parties to bear their own cost.

Arif Ali
MEMBER (ADMINISTRATIVE)

Leg. S/No. 19.1.93
VICE-CHAIRMAN

Central Administrative Tribunal
Cuttack Bench, Cuttack
dated the 19.1.1993/ J. K. Ranoo

